

# Court offers split decision on Ten Commandments\_71105

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## Court offers split decision on Ten Commandments displays

**By Robert Marus**

*ABP Washington Bureau*

WASHINGTON (ABP)-The U.S. Supreme Court offered split decisions on an issue that often splits Americans-display of the Ten Commandments on government property-ruling one such display on the Texas Capitol grounds was appropriate while two displays in Kentucky courthouses were not.

The court, divided 5-4 on the issue, said whether a governmental display of the Ten Commandments is constitutional depends largely on the purpose of the display.

In the Texas case, *Van Orden vs. Perry*, the justices ruled 5-4 that the display was constitutional. Thomas Van Orden, a homeless man and former attorney, had sued the state of Texas to have the monument removed from its spot between Texas' Capitol and Supreme Court building. The 5th U.S. Circuit Court of Appeals upheld the display, noting it had secular purposes in teaching about the history of the state's legal system and in honoring the fraternal organization that donated it to the state in 1961.

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A majority of the U.S. Supreme Court—Chief Justice William Rehnquist and associate justices Stephen Breyer, Anthony Kennedy, Antonin Scalia and Clarence Thomas—agreed, saying the display does not violate the First Amendment.

Viewed along with other monuments on the Texas Capitol grounds, they said, the monument can be seen as primarily an acknowledgement of the role that religion and morality played in the history of Texas.

Previous Supreme Court decisions require that governmental references to religion have some secular purpose, such as the teaching of history, behind them or be so minimal or generic in their religious content as to be insignificant.

Phil Strickland, director of the Baptist General Convention of Texas Christian Life Commission, affirmed the principle of the “secular purpose” concept the court applied. But he disagreed with the way the justices interpreted the facts in the Texas case.

In all cases, a clear secular purpose statement would remove any suggestion of a government endorsement of the Ten Commandments, Strickland said. Public displays of religious language are not illegal by definition.

“We rightly recognize and celebrate the important role that religion has played in the life of our nation and state, but we must be vigilant to protect citizens from government-endorsed religious expression,” he said.

“The monument on the grounds of the capitol may seem harmless enough to the casual observer, but the principle it raises was and is a matter of life and death both for our Baptist forebears and for contemporary Baptists across the globe who live daily under the oppression of state-sponsored religion.”

In the second case, *McCreary County, Ky., vs. ACLU*, another 5-4 decision said the two courthouse displays were unconstitutional. Justice David Souter—joined by justices Stephen Breyer, Ruth Bader Ginsburg, Sandra Day O'Connor and John Paul Stevens—said the history of the displays revealed they violated the First Amendment.

Officials in Kentucky's McCreary and Pulaski counties initially placed only framed copies of the Protestant King James version of the commandments in their courthouses. Local residents sued the counties, with the help of the American Civil Liberties Union of Kentucky, for violating the establishment clause. The displays were then modified to incorporate legal and historical documents other than the commandments.

In response, the county commissions passed resolutions instructing officials to “post the Ten Commandments as the precedent legal code upon which the civil and criminal codes of the Commonwealth of Kentucky are founded.” They then modified the display, adding several other documents—beside and smaller than the framed Decalogue—that purported “to demonstrate America's Christian heritage.”

They included an excerpt from the Declaration of Independence, a proclamation by late President Ronald Reagan declaring 1983 the “Year of the Bible,” and the Mayflower Compact.

A federal court also found the modified displays unconstitutional, and the counties—after getting new attorneys—again altered their displays to include several other documents of patriotic or historic legal nature, including lyrics to the “Star-Spangled Banner” and a picture.

The third version of the displays also included an explanatory text that said, “The Ten Commandments provide the moral background of the Declaration of Independence and the foundation of our legal tradition.”

In late 2003, the 6th U.S. Circuit Court of Appeals ruled that the displays

were not erected with a sufficiently secular purpose and that they appeared to endorse religion, even after they were modified. The Supreme Court said the original purpose of the displays—before they were modified—made them unconstitutional.

*John Hall of Texas Baptist Communications contributed to this report.*

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